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16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

ED CR No. 18-231-JGB

20 Plaintiff,

UNITED STATES' SENTENCING POSITION  
CONCERNING DEFENDANT JOHN JACOB  
OLIVAS; EXHIBITS 2-19

v.

21 JOHN JACOB OLIVAS,

**[EXHIBITS 1, 20-22 FILED  
CONCURRENTLY UNDER SEAL]**

22 Defendant.

23  
24 Hearing Date: March 13, 2023  
Hearing Time: 2:00 p.m.  
Location: Ctrm. of the Hon.  
Jesús G. Bernal

25 Plaintiff United States of America, by and through its counsel  
26 of record, the United States Attorney for the Central District of  
27 California and Assistant United States Attorneys Eli A. Alcaraz and  
28

1 Frances S. Lewis, files its Sentencing Position concerning defendant  
2 John Jacob Olivas.

3 This Sentencing Position is based on the attached memorandum of  
4 points and authorities and supporting Exhibits 1-22, where Exhibits 1  
5 and 20-22 are filed concurrently under seal; the files and records in  
6 this case, including the United States Probation and Pretrial  
7 Services Office's Presentence Investigation Report and Recommendation  
8 Letter; and such further evidence and argument as the Court may  
9 permit. The United States respectfully requests the opportunity to  
10 supplement its position or respond to defendant or the Probation  
11 Office as may become necessary.

12 Dated: February 22, 2023

Respectfully submitted,

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

3 Defendant John Jacob Olivas ("defendant"), a former Homeland  
4 Security Investigations ("HSI") Special Agent, is a predator who  
5 imposed nightmarish trauma on his romantic partners. He willfully  
6 abused and misused his federal agent power to cause physical,  
7 psychological, and emotional pain, culminating in the attempted rape  
8 of K.L. in January 2012 and two rapes of N.B. in September and  
9 November 2012. That his victims are suffering lifelong negative  
10 effects of defendant's blatant abuse is an enduring tragedy.

11 Defendant is set to be sentenced on three counts of Deprivation of  
12 Rights Under Color of Law, in violation of 18 U.S.C. § 242, which are  
13 premised on attempted and completed aggravated sexual abuse.

14 On February 6, 2023, United States Probation and Pretrial  
15 Services Office ("Probation") filed its Recommendation Letter ("RL,"  
16 Dkt. 266) and Presentence Investigation Report ("PSR," Dkt. 267).  
17 The PSR calculated a total Guidelines offense level of 43<sup>1</sup> and a  
18 Criminal History Category of II, resulting in a Guidelines range of  
19 life imprisonment. (PSR ¶¶ 23-60, 62-70, 102.)

20 The United States respectfully requests, consistent with  
21 Probation's recommendation and requests by the victims, that the  
22 Court impose a custodial sentence of life on each of the three counts  
23 of conviction.<sup>2</sup> Defendant's sentence must include \$300 in special

25                   <sup>1</sup> Defendant's Total Offense Level is actually 47, higher than  
26 the highest row in Guidelines Sentencing Table, but under Guidelines  
§ 5A, Application Note 2, if the offense level is more than 43, it is  
to be treated as an offense level 43.

27       <sup>2</sup> As more fully detailed in Section IV.C, *infra*, conceptualizing  
28       a "life" sentence in this context (where defendant is 48 years old),  
      roughly approximates 30-35 years' imprisonment, which is also  
      consistent with sentences imposed nationwide.

1 assessments and should have restitution to N.B. totaling \$17,125.65.  
2 If the Court imposes a custodial sentence less than life (it should  
3 not), then it should impose five years of supervised release with the  
4 terms in the Recommendation Letter.

5 This sentence is sufficient and not greater than necessary under  
6 18 U.S.C. § 3553(a) to accomplish the goals of sentencing. It fairly  
7 balances the nature, circumstances, and seriousness of the offense  
8 with defendant's history and characteristics and the need to protect  
9 the public, provide deterrence, and promote respect for the law,  
10 among other considerations.

11 **II. FACTUAL BACKGROUND**

12 The following facts were presented during the 2021 and 2022  
13 trials and are consistent with the facts in the PSR. (PSR ¶¶ 7-18,  
14 21.) In 2011 and 2012, defendant was a Special Agent of United  
15 States Immigration and Customs Enforcement ("ICE"), HSI, formerly  
16 known as "ICE, Office of Investigations." Instead of using his  
17 badge, service firearm, and federal law enforcement power to better  
18 his community, defendant used his position and power for his own  
19 personal gratification: sexually abusing and attempting to sexually  
20 abuse two of his intimate partners and preventing them from reporting  
21 his sexual assaults, as well as other acts of violence, to law  
22 enforcement. Defendant's abuse of his federal law enforcement  
23 authority violated the victims' constitutional rights, namely, their  
24 rights to liberty and bodily integrity. After a multi-week trial in  
25 December 2022, defendant was found guilty of all three constitutional  
26 violations charged in the Indictment.

1                   **A. DEFENDANT'S STATUS AND TRAINING AS AN HSI SPECIAL AGENT**

2                   As part of his position as a Special Agent of ICE-HSI, and to  
3 enable him to carry out his responsibilities in that position, ICE-  
4 HSI issued defendant official government credentials, a badge, and  
5 firearms, including a Sig Sauer model P229, .40 caliber semiautomatic  
6 handgun, bearing serial number AEU00488 (the "service weapon").  
7 During defendant's relationship with K.L., he also briefly had an M4  
8 semi-automatic rifle. Defendant, like all HSI agents, received  
9 extensive training on what he could and could not do with his badge  
10 and firearm, while both on and off duty. Specifically, he was  
11 trained that he could never use his badge or credentials to exert  
12 undue influence or secure a favor, that he could not consume alcohol  
13 while carrying a firearm, that he had to store his firearm in a  
14 secure location at all times, and that as a representative of the  
15 United States he was subject to the highest ethical standards both on  
16 and off duty.

17                   **B. ATTEMPTED RAPE OF K.L. UNDER COLOR OF LAW (COUNT ONE)**

18                   Beginning in approximately August 2011 and continuing to January  
19 2012, defendant was in a romantic relationship with K.L. During  
20 their relationship, defendant repeatedly exhibited escalating violent  
21 and controlling behavior and would use his position as a Special  
22 Agent to prevent K.L. from reporting his conduct to the police. On  
23 their first few dates, he told her he could get into anyone's  
24 Facebook and that he could copy information from her phone by placing  
25 his next to hers. He told her he couldn't disclose his job for her  
26 "safety" and that he was "not a cop," because he was "above a cop."  
27 Defendant told her he was "invisible" and "untouchable." Defendant  
28 claimed he could track her on his phone, and after incidents of rage

1 or violence, told her that if she called the police that he would  
2 just make up false charges against her and also conspire with her ex-  
3 husband to take away her kids. The police would believe his false  
4 charges against her, he said, because he was a federal agent.

5 On or about October 1, 2011, defendant and K.L. went to a water  
6 park. When they arrived to a long line at the entrance, defendant  
7 cut in front with a group of individuals he appeared to recognize,  
8 whispering to K.L., "they're my informants." When defendant and K.L.  
9 went to leave, defendant asked K.L. to drive home, but when she  
10 refused, defendant flew into a rage, smashing her phone and car  
11 doors. He then demanded the keys and drove erratically and over 100  
12 m.p.h. all the way back to K.L.'s apartment in Chino, California, in  
13 San Bernardino County, berating her during the drive. When they  
14 arrived at K.L.'s house, K.L. hid in her room hoping defendant would  
15 leave, but he refused. When K.L. eventually came downstairs,  
16 defendant surprised her and grabbed her by her face. Defendant  
17 squeezed so hard he gave K.L. two black eyes. Defendant then told  
18 her that law enforcement would not believe her if she reported the  
19 incident to them because he was above law enforcement.

20 During another violent episode later in the relationship, in  
21 December 2011, defendant threw his badge at K.L. and refused to let  
22 her leave because he was "Homeland Security." Throughout their  
23 relationship, defendant, in the presence of K.L. and in order to  
24 intimidate K.L., would show others his federal law enforcement  
25 credentials to security personnel or other people, including when  
26 they went to bars and restaurants. Defendant also repeatedly asked  
27 to be added to K.L.'s Southern California Edison bill so he could  
28 move his child custody proceedings with his second wife, R.A., to San

1 Bernardino County. When K.L. refused, defendant added his name to  
2 the utility account without her knowledge or consent.

3 Defendant's violent behavior toward K.L. culminated with his  
4 attempt to rape her in January 2012 after K.L. no longer was dating  
5 defendant, but was still too scared to report his conduct because of  
6 his claims about his federal position and authority, including that  
7 he could make her "disappear." Defendant contacted K.L. requesting  
8 to apologize to her in person, and K.L. reluctantly agreed to go to  
9 his house in the City of Riverside to hear his apology. K.L. then  
10 stayed to watch a movie, but made clear to defendant that she was not  
11 interested in any physical or romantic contact. Defendant then  
12 disregarded her request and sat down on the couch next to K.L. and  
13 began to initiate physical contact without K.L.'s consent, including  
14 by trying to kiss her and put his hand up her shirt. K.L. repeatedly  
15 told him "no" and to "stop," but defendant was physically on top of  
16 her. Defendant pinned her down by the shoulders and tried to rip her  
17 pants and underwear off, intending to force K.L. to have sex with  
18 him. As K.L. kicked and screamed, defendant continued to try and  
19 force K.L. to have sex, but he was ultimately unable to remove her  
20 pants and underwear because of the location of her knee, pinned  
21 between her stomach and his chest. Defendant eventually relented,  
22 and K.L. went home. During that attempted rape K.L. believed that  
23 defendant, based on his prior actions and threats, was going to  
24 sexually assault her, that he would make her disappear, and that he  
25 would get away with these actions because of his status as an HSI  
26 special agent.

27

28

1           **C. TWO RAPES OF N.B. (COUNTS TWO AND THREE)**

2           Within two months of attempting to rape K.L. in January 2012,<sup>3</sup>  
3 defendant began a romantic relationship with N.B. Defendant  
4 exhibited the same violent, escalating, controlling, and intimidating  
5 behavior with N.B., that he had exhibited with K.L., which included  
6 defendant's repeated brandishing of HSI credentials to her and  
7 asserting that he was above the law and showing his credentials to  
8 third parties to demonstrate his authority. In August 2012, after  
9 already having committed several acts of violence against N.B.,  
10 defendant threatened to have a confidential informant physically  
11 attack N.B. and put her in the hospital if she were to ever cheat on  
12 him.

13           Throughout their relationship, defendant repeatedly used his  
14 status and powers as a federal agent to intimidate N.B. and dissuade  
15 her from reporting his abusive behavior to law enforcement. For  
16 example, defendant at one point texted N.B. during an argument, "I'm  
17 a god damned federal agent. Do you honestly have anything to compare  
18 what I do to? Didn't think so, so stop." Defendant would also  
19 pretend to call "Sector," a clearing house for calls by HSI federal  
20 agents, and in front of N.B. would request that law enforcement  
21 disregard any potential calls from his house.

22           Defendant raped N.B. at gunpoint on or about September 28, 2012,  
23 at his house in the City of Riverside after a night at a local bar.  
24 Earlier in the evening, when leaving the bar, defendant and N.B. had  
25 an argument about who should drive them home, with defendant

27           

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<sup>3</sup> The PSR says that N.B. and defendant started dating in January  
28 2012 (PSR ¶ 11), but N.B.'s trial testimony was that she and  
defendant had their first date on March 22, 2012.

1 insisting that he could drive despite consuming multiple alcoholic  
2 drinks. As N.B. started to drive home, defendant took out his loaded  
3 HSI-issued service weapon and pointed it at N.B.'s head, asking,  
4 "What would you do if I pulled the trigger?" When they arrived at  
5 defendant's house, defendant pressed his loaded service weapon into  
6 N.B.'s back while she struggled to get the keys into the door. Once  
7 inside, defendant pushed N.B. onto the floor and dragged her across  
8 the room, flipping her onto her back and causing her arm to scrape  
9 the floor. Defendant yelled at N.B. that she "better not bleed on my  
10 carpet, you stupid bitch!"

11 Defendant placed his service weapon that he just used to  
12 intimidate her and direct her movement on a table above them and  
13 proceeded to rip N.B.'s pants off while she was kicking and screaming  
14 at him to stop. Defendant then forced N.B. to engage in vaginal  
15 intercourse with him without her consent.

16 Approximately a week later, on October 5, 2012, when N.B.  
17 attempted to leave defendant's house, he grew angry and violently  
18 choked her, slamming her into a wall until she could not breathe.  
19 Defendant would not let N.B. leave or make any phone calls other than  
20 to her longtime mentor, L.T. (who testified at the trials).

21 On or about November 4, 2012, defendant violently assaulted N.B.  
22 by squeezing her so hard her rib made a popping sound sending N.B. to  
23 the urgent care. On or about November 10, 2012, at defendant's home  
24 in the City of Riverside, when N.B. was still trying to recover and  
25 was physically wearing a rib binder to protect her injured ribs,  
defendant again forced N.B. to engage in vaginal intercourse with him  
without her consent, causing her immense physical pain and additional  
injuries. When defendant sexually assaulted N.B. in November 2012,

1 his HSI-service weapon was on the night stand next to the bed, within  
2 defendant's reach, and within N.B.'s line of sight.

3 **III. THE PSR AND THE UNITED STATES' OBJECTIONS AND COMMENTS**

4 **A. OFFENSE LEVEL**

5 In the PSR, Probation concluded that the Total Offense Level is  
6 43. While the United States agrees with the ultimate Guidelines  
7 calculation, it believes that a two-level upward adjustment under  
8 § 3C1.1 for Obstructing or Impeding the Administration of Justice  
9 should apply to the adjusted offense level for Counts Two and Three,  
10 which affect the offense level before applying Application Note 2 to  
11 § 5A. This Section's analysis begins by justifying the § 3C1.1  
12 enhancement, and then explains the PSR's calculations, but with the  
13 two-level enhancement integrated into the PSR's analysis.

14 **Section 3C1.1 Adjustment:** A two-level upward adjustment applies  
15 when a defendant willfully obstructs or impedes the administration of  
16 justice, or attempts to do the same, concerning the investigation or  
17 prosecution of the instant offense of conviction and where the  
18 obstructive conduct concerns the offense of conviction and any  
19 relevant conduct or a closely related offense. U.S.S.G. § 3C1.1.  
20 Explicitly covered by this provision is (1) "threatening,  
21 intimidating, or otherwise unlawfully influencing a . . . witness  
22 . . . directly or indirectly, or attempting to do so" and  
23 (2) "threatening the victim of the offense in an attempt to prevent  
24 the victim from reporting the conduct constituting the offense of  
25 conviction." Id. (Application Note 4, Subsections (A), (K)).

26 The Court is well aware of defendant's obstructing and impeding  
27 conduct that is the basis of this enhancement because the parties  
28 heavily litigated his state court admissions on the same. Defendant

1 admitted to, and was convicted in Riverside Superior Court of,  
2 witness tampering, in violation of California Penal Code  
3 § 136.1(b) (1). (Dkt. 204 at 2 and its Ex. 2 at 2.) At his September  
4 10, 2015 state change of plea hearing, defendant admitted that "on or  
5 about March 1st, 2013, through March 31st, 2013 . . . [defendant] did  
6 willfully and unlawfully attempt to -- or intimidate and dissuade  
7 [N.B.] from giving testimony in a criminal proceeding based on the  
8 fact that you asked her to not come forward with the information  
9 regarding the crimes that you committed against her by threatening to  
10 send a text video to her father of sexual acts." (Dkt. 204, Ex. 1 at  
11 4, 6-7, 8-9.) This Court issued a written ruling that held "it is  
12 impossible to read the colloquy and accompanying plea documents as  
13 anything other than an admission of guilt" for the crimes discussed  
14 at the change of plea and listed in in plea documents. (Dkt. 227 at  
15 11.) The Court heard N.B.'s testimony at two trials that her  
16 romantic relationship with defendant lasted between approximately  
17 March and December 2012. N.B. also consistently testified that she  
18 did not report defendant's criminal acts to local law enforcement  
19 until October 2013. Defendant's conduct seven months before, in  
20 March 2013, was obstruction and attempted obstruction of the  
21 investigation and prosecution of the instant offenses. That witness  
22 intimidation was ultimately charged by the state, and that N.B.  
23 initially reported to local law enforcement, does not mean  
24 defendant's conduct was intended to intimidate N.B. as to state  
25 crimes only<sup>4</sup>--his actions were intended to prevent her from coming to  
26

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27 <sup>4</sup> PSR ¶ 21 says that the obstruction concerned Riverside County  
28 case RIF1402028, but N.B. had not yet reported to any law enforcement  
when she was intimidated, so this narrow description in ¶ 21 is not  
consistent with the facts presented at trial and in this case.

1 law enforcement at all, for any of defendant's criminal conduct,  
 2 which includes the offenses of conviction. Section § 3C1.1 applies.<sup>5</sup>

3 **Integrated Calculations:** The three counts of conviction do not  
 4 group (see § 3D1.2), accordingly it is necessary to separately  
 5 calculate the Total Offense Level for each count of conviction to  
 6 determine defendant's combined adjusted offense level. See U.S.S.G.  
 7 § 3D1.4. The proper calculations follow:

8 **COUNT 1:**

Base Offense Level: Deprivation of Rights (18 U.S.C. § 242)		36	§ 2H1.1(a) (1)
<i>Attempted Aggravated Sexual Abuse</i>	30		§ 2A3.1(a) (2)
<i>Use of Force</i>	+4		§ 2A3.1(b) (1)
<i>Serious Bodily Injury</i>	+2		§ 2A3.1(b) (4)
Offense Committed Under Color of Law:		+6	§ 2H1.1(b) (1) (B)
Total Offense Level:		42	
Units: (See PSR ¶¶ 24-33.)			1

14 **COUNT 2:**

Base Offense Level: Deprivation of Rights (18 U.S.C. § 242)		36	§ 2H1.1(a) (1)
<i>Aggravated Sexual Abuse</i>	30		§ 2A3.1(a) (2)
<i>Use of Force</i>	+4		§ 2A3.1(b) (1)
<i>Serious Bodily Injury</i>	+2		§ 2A3.1(b) (4)
Offense Committed Under Color of Law:		+6	§ 2H1.1(b) (1) (B)
Obstructing the Administration of Justice:		+2	§ 3C1.1
Total Offense Level:		44	
Units: (See PSR ¶¶ 21, 34-43.)			1

21 **COUNT 3:**

Base Offense Level: Deprivation of Rights (18 U.S.C. § 242)		36	§ 2H1.1(a) (1)
<i>Aggravated Sexual Abuse</i>	30		§ 2A3.1(a) (2)
<i>Use of Force</i>	+4		§ 2A3.1(b) (1)
<i>Serious Bodily Injury</i>	+2		§ 2A3.1(b) (4)
Offense Committed Under Color of Law:		+6	§ 2H1.1(b) (1) (B)

26 <sup>5</sup> Although § 3C1.1 does not affect the ultimate Total Offense  
 27 Level due to U.S.S.G. § 5A, the enhancement is applicable and  
 28 confirms just how egregious defendant's conduct is, resulting in an  
 offense level of 47. If the Court determines that § 3C1.1 does not  
 apply, defendant's conduct is otherwise relevant conduct and under  
 § 3553(a) it further supports the United States' requested sentence.

1	Obstructing the Administration of Justice:	+2	§ 3C1.1
2	Total Offense Level:	44	
3	Units:	1	

(See PSR ¶¶ 21, 44-53.)

Using the group with the highest offense level (Counts 2 and 3: 44) and adding three Units (PSR ¶ 56), the Total Offense Level is 47, which gets adjusted to 43 under U.S.S.G. § 5A, Application Note 2.

#### **B. CRIMINAL HISTORY CATEGORY**

The PSR concluded that defendant is in Criminal History Category II because of a Criminal History score of three. (PSR ¶¶ 62-70.)

The United States has no objection to this calculation.

#### **C. PROBATION'S RECOMMENDED SENTENCE**

The Guidelines range for a total offense level of 43 with Criminal History Category II<sup>6</sup> is life. (PSR ¶ 102.)

In its Recommendation Letter, Probation recommended the following sentence: (1) a lifetime custodial sentence on each count of conviction to be served concurrently, (2) \$300 in special assessments, and (3) that all fines be waived. (RL at 1.) If the Court decides to impose a custodial sentence less than life, then Probation recommends that the Court impose five years of supervised release with various conditions. (RL at 1-2.)

#### **IV. THE UNITED STATES' RECOMMENDED SENTENCE AND § 3553(a) ANALYSIS**

The United States recommends the following sentence: a custodial sentence of life, \$300 in special assessments, and restitution to N.B. totaling \$17,125.65. If the Court imposes a custodial sentence less than life (it should not), then it should impose five years of supervised release with the terms in the Recommendation Letter.

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<sup>6</sup> PSR ¶ 102 appears to have a typographical error, listing defendant's Criminal History Category a I, instead of II.

1                   **A.     NATURE, CIRCUMSTANCES, AND SERIOUSNESS OF THE OFFENSE**

2                   Defendant's conduct is abhorrent and an affront to the trust he  
3 was given as a Special Agent. As briefly described in Section II,  
4 supra, and presented during two trials, the Court is well-aware that  
5 defendant repeatedly and methodically abused and misused his federal  
6 agent power, slowly wearing down K.L. and N.B. to submit to his  
7 authority. In that process, he was a terror. This Section  
8 highlights additional aggravating facts concerning his conduct.

9                   K.L.: K.L. testified at trial that when defendant threatened  
10 that he could make her disappear one evening at her house during a  
11 violent fight, she froze. The utter fright she felt that she might  
12 disappear, and that her children would never know what happened to  
13 her, led her to take photographs of some of defendant's physical  
14 abuse. (Ex. 1 (Trial Ex. 46, Photos of Bruising) (under seal).)  
15 K.L.'s demeanor changed during her testimony as she recoiled, looking  
16 at the photographs and describing them to the Jury. The  
17 psychological and physical pain he caused was part and parcel of  
18 defendant's criminal conduct.

19                   N.B.: Two recordings were introduced at the trial that highlight  
20 how defendant influenced N.B. with his power. Early in their  
21 relationship, in May 2012, defendant had already begun to intimidate  
22 N.B. with his position, as shown by her mimicking his words back to  
23 him during an argument. (Ex. 2 (transcript of Trial Ex. 231).) By  
24 August, he was threatening to have a confidential informant put her  
25 in the hospital if N.B. were ever to cheat on defendant. (Ex. 3  
26 (transcript of Trial Ex. 283).) Defendant was able to control N.B.,  
27 not only through direct threats, but by essentially telling her that  
28 someone she doesn't know could attack her at any moment.

1 Additionally, defendant's sexual aggression is corroborated by texts  
2 from N.B. early in their relationship when she told him "Im always  
3 telling you no.. always telling you I don't feel well and to stop but  
4 you don't.. you continue to force yourself on me.. I fight with you  
5 to keep my panties and stuff on and you still fight me so I just give  
6 up and do it. Imagine every time you had sex you felt pain.. would  
7 you want to fuck all the time?" (Ex. 4 (Trial Ex. 239) at 1.)

8       **Others in His Life:** Defendant's misuse of his power, in  
9 particular, his HSI-issued service weapon, was not limited to his  
10 romantic partners. As N.B. testified, during an early-November 2012  
11 argument, defendant pointed his gun at N.B. as well as each of his  
12 parents. While defendant pled guilty to pointing his gun at his  
13 father (see Section IV.B, infra), his mother was also a victim of his  
14 threats, as confirmed by a text message to N.B. (Ex. 5 at 2.)

15       **Social Media:** N.B. was intimidated by defendant after their  
16 relationship ended, including in March 2013 when he threatened to  
17 send sexually explicit videos of him and N.B. to N.B.'s father.  
18 Around this time, while N.B. was deciding whether and how to report  
19 defendant's crimes, he made various social media posts that give  
20 insight into his paradigm and why N.B. struggled to gain the courage  
21 to report. Exhibits 6-8 are screenshots that N.B. took of  
22 defendant's social media in the Spring of 2013 and that the United  
23 States was prepared to introduce into evidence (1) if defendant  
24 testified or (2) if N.B.'s delay in reporting was questioned. His  
25 posts minimize rape as a "Snuggle with a Struggle" (Ex. 6), laugh at  
26 domestic violence (Ex. 7), and imply he is willing to go further with  
27 witness intimidation (Ex. 8). To be clear, defendant was an HSI  
28 Special Agent when he made these social media posts.

1                   **B. DEFENDANT'S HISTORY AND CHARACTERISTICS**

2                   Defendant's crimes against K.L. and N.B. are built on the  
3 sexually violent horrors suffered by defendant's first wife, C.N.,  
4 and second wife, R.A. The record before the Court is that defendant  
5 was a sexual predator and an otherwise physically, emotionally, and  
6 psychologically abusive romantic partner for at least a dozen years  
7 (1999-2012). His boldness to commit violence grew as his power grew,  
8 culminating as an HSI Special Agent and becoming "untouchable." His  
9 history and characteristics cannot ignore defendant's rapes of C.N.  
10 and R.A. Further, defendant's misuse of his power and gun did not  
11 stop with K.L and N.B.--he terrorized his third wife M.S. as well.

12                  **First Wife--C.N.:** The Court is familiar with C.N. (also referred  
13 to as C.R.) from her testimony at the first trial, and the United  
14 States' briefing on Rule 413 evidence related to her. (See, e.g.,  
15 Dkts. 80 at 2, 11; 193 at 4-5, Ex. 1.) On their first date,  
16 defendant "forced himself" on her and she got pregnant. (Tr. 12/1/21  
17 at 97-100.) He also forced her to have sex when she had a UTI  
18 infection while she was in "severe pain." (Tr. 12/1/21 at 100-03.)  
19 When he abused her, he'd tell her, "It's fine, you're my wife" and  
20 would laugh cruelly. (Tr. 12/1/21 at 111.) Although defendant was  
21 in the military when he was married to C.N. and was honorably  
22 discharged (PSR ¶¶ 77, 89), the outward face he showed others hid his  
23 criminal acts behind closed doors. Indeed, his violence covered both  
24 vaginal and anal rape. (Dkt. 193, Ex. 1 at 1.) As C.N. testified at  
25 the first trial, it was hard for her to be in the same room as  
26 defendant over 20 years after they separated because "[h]e's just  
27 very intimidating." (Tr. 12/1/21 at 97.) C.N. was so traumatized by  
28 defendant's sexual violence and abuse toward her that she essentially

1 ran away, forced to leave behind her young son rather than continue  
2 to endure such horrific violence. The experience of testifying at  
3 the first trial resurrected so much pain for C.N. that she pleaded  
4 not to have to go through that experience again at the second trial.  
5 Her suffering has lasted decades, and defendant's sentence should  
6 reflect that.

7       **Second Wife--R.A.:** The Court is familiar with R.A. from her  
8 harrowing testimony at both trials, and the United States' briefing  
9 on Rule 413 evidence related to her. (See, e.g., Dkt. 80 at 11-12.)  
10 The Court twice heard R.A.'s emotional testimony about defendant's  
11 violent rape, weeks after giving birth to the son she shares with  
12 defendant, while she still had stitches from the Cesarean section  
13 birth. (See generally Tr. 12/1/21 at 43-68.) During cross  
14 examination at both trials, defendant elicited testimony about other  
15 acts of physical, emotional, and psychological abuse committed by  
16 defendant against R.A., which led to two restraining orders. This  
17 abuse is corroborated by a letter written by her sister. (Ex. 17.)  
18 Further, R.A. testified on cross-examination that she never wanted  
19 anyone to know about the rape for reasons including shame and trauma.

20       There is other evidence in the record, in particular, from  
21 defendant's phone, that affirms his abuse of R.A., specifically the  
22 rape. In Trial Exhibit 289, which are text messages between N.B. and  
23 defendant, he explained to N.B. guilt he had about what he did to  
24 R.A. (Ex. 9 at 2, 5-6.) From the context of the texts, it is  
25 apparent that they are discussing infidelity and harms not including  
26 the rape. (See generally Id.) But then, defendant told N.B.--"I  
27 left out some key info[.] Info I'm carrying to my grave. You only  
28 have 1 side of the story[.]" (Id. at 9 (emphasis added).) The

1 information--the rape--has now come to light through R.A.'s  
2 testimony. Defendant's sentence should reflect his unspeakable acts  
3 committed on R.A. and the lasting trauma caused. (See Ex. 16.)

4       **Third Wife--M.S.:** Defendant's third wife, M.S. (also referred to  
5 as M.H. and M.O.), testified at both trials about how defendant  
6 abused and misused his federal agent power against her. At the  
7 retrial, she testified about (1) how defendant intimidated her from  
8 calling the police by leading her to believe he spoke with the  
9 Riverside Police Department and told them not to respond to 911  
10 calls, (2) how he grabbed her, pinning her arms to her side, and  
11 threateningly held her over a pool until she agreed to go on a trip  
12 with him, and (3) how he once pointed his HSI-issued service weapon  
13 at her during an argument to get her to comply. (Cf. Dkt. 227 at 5-  
14 6.) M.S. testified to these events and also that sharing custody of  
15 a minor child with defendant caused her stress in testifying. The  
16 Court observed her demeanor and can further credit her testimony  
17 based on other sworn statements showing how defendant terrorized her.  
18 In an August 30, 2016 divorce proceeding declaration, M.S. swore  
19 (1) that defendant "has pointed his gun at me, and has told me that  
20 'I will not leave this relationship alive,'" (2) that "[d]uring our  
21 marriage, because [defendant] was a federal agent, I did not believe  
22 that the police would help me" and when she told defendant "I was  
23 going to call the cops, [defendant] would appear to get on the phone  
24 with the Riverside Police Department, refer to himself as 'Special  
25 Agent Olivas' and tell them to disregard any calls to his address,"  
26 (3) that defendant was "controlling, manipulative and frightening,"  
27 and (4) that she was "petrified" when defendant held her "over the

1 pool and threaten[ed] me that I better go on the trip with him."  
2 (Ex. 10 at 2-3.)

3 Between N.B., K.L., C.N., R.A., and M.S., there is ample  
4 evidence that the specifics of the case and defendant's history and  
5 characteristics show a clear and present danger to women through  
6 emotional, physical, psychological, and sexual abuse and violence.

7 **Countervailing Considerations:** Weighed against this mountain of  
8 aggravating circumstances is the fact that, in 2015, defendant took  
9 responsibility for some of his actions when he pled guilty in  
10 Riverside Superior Court to assault with a deadly weapon against his  
11 father and to a November 2012 domestic violence incident with N.B.  
12 preceding the rape charged in Count Three. (PSR ¶ 68; see Dkts. 204  
13 at 5-6, Ex. 1 at 8, Ex. 2 at 2; 227 at 15.) Defendant showed little  
14 to no remorse at sentencing in that case and apologized to the  
15 victims only through his attorney. To be clear, he did not admit or  
16 acknowledge any of the charges from this case and has never accepted  
17 responsibility for his acts of sexual violence against any woman. In  
18 his prior state case, defendant was sentenced to four years in prison  
19 (PSR ¶ 68) and served 21 months (RL at 4). For these narrow criminal  
20 acts in the long arc of conduct relevant to this case, defendant has  
21 been held accountable. In seeking a sentence of "life," the United  
22 States is not relying on this conduct, which defendant has embraced.

23 At bottom, though, when considering the § 3553(a) factors,  
24 defendant's prior plea does not meaningfully change the calculus--the  
25 Court should impose a life sentence.

26 **C. A "LIFE" SENTENCE DOES NOT LEAD TO SENTENCING DISPARITIES**

27 The United States, Probation, and the victims in this case all  
28 request that the Court impose a custodial sentence of life. All at

1 once, "life" is a low-end Guidelines sentence and the applicable  
2 statutory maximum sentence. To help the Court crystalize its view of  
3 "life" in this case, the United States now provides (1) high-level  
4 information about life expectancy and (2) an array of relevant cases  
5 nationwide, where courts either imposed "life" or what life might  
6 roughly approximate in this case. To be clear, the United States is  
7 not attempting to predict the future with mathematical certainty (and  
8 it is not asking that of the Court either). Rather, in seeking such  
9 a significant within-Guidelines sentence, the United States believes  
10 that additional information should be presented and considered.

11                   1. Life Expectancy

12       In imposing a "life" sentence, the specifics of any defendant  
13 must be examined carefully. Defendant is an educated, 48-year-old,  
14 white, Hispanic male, who was born in California and lived here for  
15 the vast majority of his life, among other things. (PSR at 2-3.)

16       According to the United States Social Security Administration  
17 "Retirement & Survivor Benefits: Life Expectancy Calculator"  
18 (<https://www.ssa.gov/cgi-bin/longevity.cgi>), a man born in the United  
19 States in 1974, at defendant's current age, has an additional life  
20 expectancy of approximately 33.5 years. While the calculator  
21 recognizes that the estimate does "not take into account a wide  
22 number of factors such as current health, lifestyle, and family  
23 history that could increase or decrease life expectancy," 34 years  
24 would mean that defendant would reach approximately 82 years old.

25       Relatedly, according to a report by the Centers for Disease  
26 Control, for Hispanic men who were 30 and 35 in 2006 (defendant was  
27 32 that year), their average life expectancy was an additional 49.6  
28 and 44.8 years, respectively. (Table G-

1 [https://www.cdc.gov/nchs/data/series/sr\\_02/sr02\\_152.pdf](https://www.cdc.gov/nchs/data/series/sr_02/sr02_152.pdf).) In other  
2 words, a Hispanic man who was 30 in 2006 was expected to live to be  
3 approximately 79.6 and a Hispanic man who was 35 in 2006 was expected  
4 to live to be approximately 79.8. If this holds true for defendant,  
5 then a "life" sentence based on this assessment would be an  
6 approximately 31-year sentence (79-48=31).

7 Given the scope of information from these sources, a "life"  
8 sentence reasonably approximates a 30-year to 35-year sentence.

9       2. Avoiding Sentencing Disparities

10       Section 3553(a)(6) requires a court to "avoid unwarranted  
11 sentencing disparities among defendants with similar records who have  
12 been found guilty of similar conduct." As the Court has learned  
13 during two trials, and as shown by a literal "off-the-charts" Total  
14 Offense Level of 47, defendant is in a league of his own.  
15 Nevertheless, a review of 18 U.S.C. § 2241 sentences (concerning  
16 aggravated sexual abuse--the predicate constitutional deprivations  
17 here) and 18 U.S.C. § 242 sentences, shows that a "life" sentence for  
18 defendant is commensurate and satisfies the purposes of sentencing.

19       **18 U.S.C. § 2241 Sentences:** Section 2241 covers aggravated  
20 sexual abuse and as the Court instructed the Jury (Dkt. 262, Instrs.  
21 17, 18), it needed to find that defendant committed and attempted to  
22 commit aggravated sexual abuse to convict him. These section 2241  
23 sentences cover core conduct in this case and are persuasive.

24       United States v. Mix, 457 F.3d 906 (9th Cir. 2006) (Dist. Ariz.,  
25 CR-00-1163-PGR): The Ninth Circuit **affirmed a life sentence** (which  
26 was above the calculated Guidelines range) for a defendant who was  
27 convicted at trial of two counts of kidnapping, five counts of  
28 aggravated sexual abuse, and two counts of assault with a deadly

1 weapon committed on the Navajo Indian Reservation for "numerous  
2 violent acts of sexual and physical assault against his live-in  
3 companion between 1998 and 2000." 457 F.3d at 908-09, 910. Besides  
4 the victim at that trial, "[t]wo other women testified that they had  
5 been physically and sexually abused by [the defendant] during their  
6 relationship with him." Id. at 909. Among other things, the  
7 district court considered "at length the grisly circumstances of [the  
8 defendant's] offenses, including his long history of violence toward  
9 women." Id. at 910. The Ninth Circuit held, "We conclude that in  
10 light of [the defendant's] seventeen-year history of unspeakably  
11 inhuman sexual abuse of women, and his continuing characterization of  
12 his conduct as unintentional, during the sentencing proceedings, the  
13 district court's imposition of a sentence outside the Guidelines  
14 range was well explained by the district court and justified the  
15 sentences imposed." Id. at 913.

16        United States v. Jim, 804 F. App'x 895 (10th Cir. Feb. 25, 2020)  
17 (D.N.M., CR 1:10-2653-JB, 347 F.Supp.3d 847): The Tenth Circuit  
18 **affirmed a life sentence** following a jury trial where the defendant  
19 was convicted of two counts of aggravated sexual abuse in the Navajo  
20 Nation. 804 F.App'x at 896, 900. Defendant had a Total Offense  
21 Level of 43 (it was actually 44, but was reduced under § 5A) and a  
22 CHC of II, with a resulting Guidelines range of life. Id. at 896-97.

23        United States v. Longee, 407 F. App'x 122 (9th Cir. Dec. 22,  
24 2010) (D. Mont., CR 09-065-GF-SEH): The Ninth Circuit **affirmed a life**  
25 **sentence** for a defendant who was convicted at trial of one count of  
26 aggravated sexual abuse, in violation of 18 U.S.C. §§ 2241(a),  
27 1153(a), for violently raping his 63-year-old, wheelchair bound,  
28 mother-in-law. 407 F. App'x at 123. Life was a "within the

1 Guidelines recommendation." Id. at 124. Defendant was in his early-  
2 30s when sentenced. (CR 09-065-GF-SEH, Dkt. 65 at 2.)

3 United States v. Martin, 528 F.3d 746 (10th Cir. 2008): The  
4 Tenth Circuit **affirmed a 30-year sentence** after a jury convicted the  
5 defendant of two counts of rape and two counts of assault for  
6 "brutally attacking his girlfriend in their shared home on the Navajo  
7 reservation" during a single evening. 528 F.3d at 748-49. That  
8 defendant attacked the victim after inaccurately concluding that the  
9 victim was flirting with his friends. Id. at 748. "He began by  
10 beating her with his fists, kicking her, and throwing her into the  
11 bathroom. There, he bashed her head against the sink faucet and  
12 started to strangle her. He finally raped her, ignoring her pleas to  
13 stop." Id. He also stabbed her genitals and body with a knife. Id.  
14 at 749. After the assault, the victim stayed in the same house as  
15 the defendant, but "[a]fraid to get blood on the bed, she fell asleep  
16 on the floor." Id. While the defendant "admitted that he beat and  
17 stabbed [the victim], he claimed that their sexual relations had  
18 always been consensual, even after he attacked her." Id. The Total  
19 Offense Level was 38 and the Criminal History Category was III, with  
20 a resulting Guidelines range of 292-365 months, and the Court imposed  
21 a near-high-end, 360-month sentence. Id. at 749, 754.

22 United States v. Healy, 583 F. App'x 661 (Mem) (9th Cir. July  
23 15, 2014) (D. Mont., 4:13-CR-007-DLC): The Ninth Circuit **affirmed a**  
24 **327-month sentence** for a defendant who was convicted at trial of one  
25 count each of assault resulting in serious bodily injury, aggravated  
26 sexual abuse, and abusive sexual contact. 583 F. App'x at 661. The  
27 Total Offense Level was 37, with CHC VI, with a resulting Guidelines  
28 range of 360 to life imprisonment. (D.C. 4:13-CR-007-DLC, Dkt. 48 at

1 2.) The defendant's conduct took place on a single evening during a  
2 heated argument, when he attacked the victim, knocked her over,  
3 strangled her, and raped her. (Id. at 2-3.) During the attack, she  
4 believed she was going to die. (Id. at 3.)

5 These sentences show that imposing a "life" sentence, or its  
6 functional equivalent here, would not lead to disparities. There is  
7 sufficient factual and legal overlap between these defendants and  
8 cases and this defendant to support the requested sentence. What's  
9 more is that these sentences are underinclusive as they do not  
10 account for defendant's abuse and misuse of his federal agent power.

11 **18 U.S.C. § 242 Sentences:** A survey of § 242 sentences affirms  
12 that a "life" sentence, with its rough approximation of 30-35 years,  
13 is appropriately imposed here.

14 United States v. Kindley, 2022 WL 17245115 (8th Cir. Nov. 28,  
15 2022) (E.D. Ark., 4:17-CR-267-DPM): The district court sentenced the  
16 defendant to **life imprisonment** after a jury convicted him of two  
17 violations of § 242 based on aggravated sexual abuse and one  
18 violation of possessing a firearm in furtherance of a crime of  
19 violence. 2022 WL 17245115 at \*1. The defendant transported inmates  
20 facing criminal charges and during one transport he "forced the  
21 handcuffed and shackled A.M. to perform oral sex on him by grabbing  
22 her hair, pulling her forward him, forcing her face onto his erect  
23 penis, and pushing her head until he ejaculated in her mouth." Id.  
24 at \*1. During another transport he "slammed [a second victim]  
25 against the van, grabbed her breast, digitally penetrated her vagina,  
26 and pressed his erect penis against her" then "demanded[ed] oral sex  
27 . . . threaten[ing] her . . . that 'all it takes is one bullet to the  
28 head.'" Id. Evidence was presented at trial that he sexually

1 assaulted other inmates and also otherwise abused other women. Id.  
2 at 2. The Total Offense Level before the § 5A adjustment was 52 and  
3 his Guidelines range was life. (4:17-CR-267-DPM, Dkt. 148 at 4.)

4 United States v. Gonzalez, 533 F.3d 1057 (9th Cir. 2008) (C.D.  
5 Cal., CR-04-1189-CAS): The Honorable Christina Snyder sentenced the  
6 defendant to **30-years' imprisonment**, after a jury convicted him of  
7 three § 242 violations for ordering victims to perform various sex  
8 acts with him when he pulled them over and while he was dressed as a  
9 police officer. 533 F.3d at 1059-060. This was a mid-range sentence  
10 (324-405) where the Total Offense Level was 41 and CHC was I. (Govt.  
11 Sent. Pos. in Gonzalez, attached as Dkt. 165-8 in 5:13-CR-087-VAP.)

12 United States v. Perez, 662 F. App'x 495 (9th Cir. Sept. 21,  
13 2016) (C.D. Cal., 5:13-CR-087-VAP): The Honorable Virginia Phillips  
14 sentenced the defendant to **25-years' imprisonment**, after a jury  
15 convicted him of three § 242 violations, where two were based on  
16 aggravated sexual abuse and one was a misdemeanor violation. (5:13-  
17 CR-087, Dkts. 165 (Govt. Sent. Pos.), 185 (J&C).) The defendant was  
18 a San Bernardino Police Officer who forced sexual intercourse with  
19 two sex workers and attempted to do the same to a third. (Id., Dkt.  
20 104 (Trial Memo).) The Total Offense Level was 48, which reduced to  
21 43, with CHC I, for a resulting Guidelines range of life. (Id., Dkt.  
22 165, at 6-7.)

23 United States v. Shaw, 891 F.3d 441 (3d Cir. 2018) (D.N.J., 2-  
24 13-CR-660): The Third Circuit **affirmed a 25-year sentence** for a  
25 correctional officer who was convicted at trial of one § 242  
26 violation premised on aggravated sexual abuse and one count of  
27 obstruction of justice. 891 F.3d at 444, 446. The defendant "forced  
28 himself" on the victim-inmate by "pressing down his hand on her chest

1 so she was unable to get up," and laid on top of her using "the  
2 weight of his body" to engage in forced sexual intercourse. Id. at  
3 445 (cleaned up). The victim felt like she could not breathe. Id.  
4 The 25-year sentence was a downward variance from the Guidelines  
5 range of life. Id. at 446.

6 **D. NEED TO PROTECT THE PUBLIC, TO PROVIDE ADEQUATE DETERRENCE,  
AND TO PROMOTE RESPECT FOR THE LAW**

7  
8 A "life" sentence will serve the purposes of sentencing under  
9 § 3553(a). The evidence before the Court is that defendant has been  
10 a danger and menace to those in his life for many years. Recidivism  
11 is a concern. Congress explained when amending 18 U.S.C. § 3583 that  
12 "[s]tudies have shown that sex offenders are four times more likely  
13 than other violent criminals to recommit their crimes. Moreover, the  
14 recidivism rates do not appreciably decline as offenders age . . . .  
15 While any criminal's subsequent re-offending is of public concern,  
16 preventing sexual offenders from re-offending is particularly  
17 important, given the irrefutable and irreparable harm that these  
18 offenses cause victims and the fear they generate in the community."  
19 H.R. Rep. 107-527. The requested sentence will protect the public,  
20 provide adequate deterrence, and promote respect for the law.

21 **V. VICTIM IMPACT STATEMENTS**

22 Attached as Exhibits 11-19, are victim impact statements from  
23 N.B.; D.B. (N.B.'s mother); C.B. (N.B.'s father); Beverly Van  
24 Santford (N.B.'s victim advocate and trusted emotional support  
25 person); K.L.; R.A. (defendant's second wife); M.P. (R.A.'s sister);  
26 I.P. (R.A.'s mother); and C.N. (defendant's first wife). Overall,  
27 the victims consistently ask that the Court sentence defendant to  
28 life imprisonment and/or the statutory maximum. There are two

1 important themes present in these letters. First, they make clear  
2 that defendant's actions are something that will always affect the  
3 victims--that they will feel the effects of his vile actions for  
4 life. Notably, they have highlighted that defendant has no remorse.  
5 Second, there are concerns that if defendant is ever released from  
6 prison, he will try to harm them. The victims know defendant best  
7 and they should not have to live in fear years from now. Defendant  
8 doesn't need his power as a federal agent to effectuate their fears.  
9 A life sentence is not something to be requested lightly, but these  
10 letters leave no doubt that one is appropriate for this defendant.

11 **VI. RESTITUTION**

12 Restitution is mandatory under 18 U.S.C. § 3663A. Exhibits 20-  
13 22 (filed under seal), total \$17,125.65 in restitution for N.B.,  
14 broken down as follows: costs for alarms in her residences, based on  
15 fear of defendant's retaliation (Ex. 20 (\$7,620.03)); for counseling  
16 to deal with his abuse (Ex. 21 (\$7,140)); and for medications  
17 associated with her counseling treatment (Ex. 22 (\$2,365.62)). If  
18 the Court determines that it needs additional information to set the  
19 appropriate restitution amount, then the United States asks, under 18  
20 U.S.C. § 3664(d)(5), that the Court defer ruling on restitution until  
21 60 days after sentencing so that additional filings can be made.

22 **VII. CONCLUSION**

23 In sum, the United States respectfully requests that the Court  
24 impose the following sentence: a custodial sentence of life, \$300 in  
25 special assessments, and restitution to N.B. totaling \$17,125.65. If  
26 the Court imposes a custodial sentence less than life (it should  
27 not), then it should impose five years of supervised release with the  
28 terms in the Recommendation Letter.